

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

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**CASCADES CONTAINERBOARD  
PACKAGING-LANCASTER,  
A DIVISION OF CASCADES NEW YORK, INC.**

**Respondent,**

**-and-**

**GRAPHIC COMMUNICATIONS CONFERENCE /  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 503**

**Petitioner.**

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: **Case No. 03-CA-210207**  
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**RESPONDENT CASCADES CONTAINERBOARD PACKAGING – LANCASTER, A  
DIVISION OF CASCADES NEW YORK, INC.’S POST-HEARING BRIEF**

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**BRIEF OF RESPONDENT CASCADES CONTAINERBOARD PACKAGING –  
LANCASTER, A DIVISION OF CASCADES NEW YORK, INC.**

Respondent Cascades Containerboard Packaging – Lancaster, a Division of Cascades New York, Inc. (“Cascades” or “Respondent”) submits this brief in support of its position that the Complaint and Notice of Hearing is without merit and should be dismissed in its entirety.

**STATEMENT OF THE CASE**

As set forth more fully below, Cascades could not – and did not – withdraw recognition from Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M (“Local 503” or “Charging Party”) or otherwise unilaterally modify the terms of a collective bargaining agreement with Local 503, as Local 503 is not, nor has it ever been, the bargaining representative of Cascades’ employees.

**PROCEDURAL HISTORY**

On or around November 20, 2017, Local 503 filed an unfair labor practice charge (Case No.: 03-CA-210207), alleging that Respondent violated Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act (“NLRA” or the “Act”) by repudiating its alleged collective bargaining agreement with Local 503 and withdrawing recognition from the Charging Party.

On February 8, 2018, the Regional Director for Region 3 of the National Labor Relations Board (“Region 3”) issued a Complaint and Notice of Hearing, in which the Regional Director alleges that Local 503 serves as the exclusive bargaining representative of certain of Respondent’s employees, and alleges further that Respondent repudiated its purported collective bargaining agreement with Local 503 and failed to and refused to bargain collectively and in good faith with

Local 503, in violation of Sections 8(a)(1) and 8(a)(5) of the Act. (GC Ex. 1).<sup>1</sup> Respondent filed an Answer denying the substantive allegations on February 27, 2018.

A hearing on the Complaint was held before Administrative Law Judge Kimberly Sorg-Graves on April 30, May 1 and May 2, 2018.<sup>2</sup>

### **STATEMENT OF THE FACTS**

#### **A. Overview of Cascades**

Cascades<sup>3</sup> is a leading manufacturer of corrugated materials. (Tr. 397). For decades, Cascades recognized Local 27C, Graphic Communications Conference, IBT (“Local 27”) as the exclusive bargaining representative of its hourly production, maintenance and truck drivers at the Company’s Lancaster, New York facility. (Tr. 426, GC Ex. 2). Cascades and Local 27 had a productive relationship, entering into repeated successive bargaining agreements, the last of which was effective from October 2, 2016 through October 1, 2020. (GC Ex. 2, R Ex. 9).

#### **B. Overview of Local 27**

As discussed in greater detail below, the Graphic Communications Conference of the Teamsters International Union (“GCC”) placed Local 27 in trusteeship in or around September, 2012. (Tr. 230). Prior to being placed in trusteeship, Local 27 operated as a viable labor organization, representing 156 employees (approximately 85 of whom worked for Cascades) in the Buffalo-Niagara Falls area. (CP Ex. 2). In addition to its officers (President Anthony Roman

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<sup>1</sup> “(Tr. \_\_)” refers to pages in the official transcript of the instant unfair labor practice proceeding held before Administrative Law Judge Kimberly Sorg-Graves. “(GC Ex. \_\_)”, “(R Ex. \_\_)” and “(CP Ex. \_\_)” refer to General Counsel’s, Respondent’s and Charging Party’s exhibits, respectively.

<sup>2</sup> On March 23, 2018, Region 3 filed a Complaint in United States District Court for the Western District of New York, seeking injunctive relief pursuant to Section 10(j) of the Act, pending disposition of the instant unfair labor practice proceedings. Cascades opposed the request, which remains pending before the District Court.

<sup>3</sup> Cascades formerly was known as Norampac. (Tr. 403).

and Business Agent and Secretary/Treasurer David Mecca, a former Cascades employee), Local 27 was governed by an Executive Board of elected members who met on a monthly basis and were responsible for the “day-to-day business” of the Local. (Tr. 71, 191, R Ex. 3). Local 27 had its own bylaws, which set forth the Union’s benefits, dues structure and office requirements, along with its processes for, among other things, electing officers, authorizing strikes, modifying dues and modifying bylaws. (Tr. 180, 182).<sup>4</sup> Pursuant to such bylaws, Local 27 charged member dues in an amount equal to two (2) hours of pay per month. (Tr. 182).

Prior to its trusteeship and eventual dissolution, Cascades employees comprised a significant portion of Local 27’s membership – in 2012, approximately 85 of Local 27’s 156 members were Cascades employees. (Tr. 188, CP Ex. 2). The influence of Cascades employees, however, extended beyond membership numbers – at least three (3) of the Executive Board members (who, it bears repeating, were responsible for Local 27’s “day-to-day business”) worked for Cascades. (Tr. 71, 257). In other words, Cascades employees constituted more than half of Local 27’s membership, and exercised (or, at the very least, had the opportunity to exercise) significant control over the Union itself. Beyond the monthly Executive Board meetings, Roman and Mecca conducted monthly meetings with Local 27 members at a VFW in Depew, New York (approximately seven (7) to eight (8) miles from the Lancaster facility), and maintained offices in Downtown Buffalo. (Tr. 45, 252, 256, 278).

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<sup>4</sup> As set forth below, Respondent subpoenaed a copy of Local 27’s bylaws from Charging Party. Charging Party failed to produce a copy of the bylaws, though Michael Stafford testified that he had possession of the bylaws, testified to their contents, and previously provided a sworn affidavit attesting that there existed differences in the bylaws of Local 27 and Local 503. (Tr. 180-182).

**C. Local 27's Trusteeship**

In February 2012, following a plant closure, undescribed financial issues, and a claim of “benefit fraud,” the GCC ordered the “Immediate Administrative Transfer” of Local 27 into Local 503, effective March 1, 2012. (Tr. 326, R Ex. 2). After Local 503’s President, Michael Stafford, expressed concern over Local 27’s financial liabilities, however, the GCC decided instead to place Local 27 into trusteeship, appointing Stafford as sole trustee and removing all Local 27 officers from their former positions. (Tr. 34, 161).

According to Stafford, this was done so Stafford could “get [Local 27’s] finances in order” prior to an administrative transfer (Tr. 37). In other words, the goal of the trusteeship *always* was to transfer Local 27 into Local 503 – it never was intended to restore Local 27 to its position as a viable labor organization, representing the employees who chose *Local 27* as their exclusive bargaining representative. (Tr. 37 (Q: Okay. So what was the goal of the trusteeship? A: To get their finances in order. And then eventually, transfer them into a viable local. Q: Okay. And the viable Local being 503? A: 503.)).

Shortly after the trusteeship was implemented (i.e., in or around 2012), Stafford disbanded the Executive Board and assumed sole control over Local 27’s operations. (Tr. 72-73). Though Local 27 previously had its own dedicated President and Business Agent, Stafford did not hire or appoint any other officers, and instead acted as Local 27’s sole trustee in addition to his full-time responsibilities as President of Local 503.<sup>5</sup> (Tr. 161). During Local 27’s trusteeship, Stafford did

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<sup>5</sup> Stafford did so despite Local 503’s bylaws, which state that the President as a “*full-time* salaried position,” and noting that “Full-Time Officer(s) shall not be employed in the trade, outside the Local.” (R Ex. 3, p.3) (emphasis added).

not arbitrate a single grievance for Cascades' employees.<sup>6</sup> (Tr. 45). He closed Local 27's office. (Tr. 161). He discontinued Roman's and Mecca's monthly meetings with Local 27 membership. (Tr. 157). In fact, he did not even revise his business card to reflect his responsibilities for Local 27. (R Ex. 8).

**D. Local 27's Dissolution And Purported Administrative Transfer**

Local 27 remained in trusteeship until its dissolution on April 1, 2017, at which point the GCC "administratively transferred" Local 27's members, assets and liabilities to Local 503. (Tr. 59). Despite Cascades decades-long bargaining history with Local 27, at no point during the trusteeship did Stafford inform Cascades of the GCC's intention to dissolve Local 27 or to "administratively transfer" its bargaining rights to Local 503. Though Stafford claimed the planned administrative transfer was "common knowledge," he could not testify to the contents of *any* conversation with anyone at the Company regarding the transfer. (Tr. 49). Given that no such conversation(s) took place, Stafford's total lack of recollection is understandable.<sup>7</sup>

In actuality, Cascades did not know – nor could it have had reason to know – that Stafford and the GCC were taking active steps to dissolve Local 27. During the pendency of the five (5) year trusteeship, Stafford negotiated, in Local 27's name and on Local 27's behalf, two (2)

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<sup>6</sup> Stafford claimed that he did not arbitrate any employee grievances because "[Local 27] just didn't have any money to – to fight grievances, to afford an arbitrator." (Tr. 45). At no point during the parties' negotiations of the 2016 collective bargaining agreements did Stafford request changes to the arbitration provisions or cost sharing arrangements. (Tr. 403).

<sup>7</sup> Stafford testified that he made Cascades aware of the planned transfer "[t]hrough conversation." (Tr. 49). When asked to identify the individual(s) with whom he had these conversations, Stafford testified "Pretty much, you know, we – kind of common knowledge. And at the time, Paul Shine was the one who – who originally started these negotiations, and then eventually got turned over to the three people that you see on the top." *Id.* He claimed later that, upon first meeting Mr. Shine, the transfer "would have – would have been brought up." (Tr. 202). Later, Stafford testified "They – I – we normally – we brought it up quite a lot – and the members knew, and everybody else knew." (Tr. 76).

collective bargaining agreements with Cascades, both of which recognize Local 27 – *not* Local 503 – as the sole and exclusive bargaining representative of the Lancaster facility’s employees. (GC Ex. 2, R Ex. 9). At no point during these negotiations (or otherwise) did Stafford state or suggest that Local 27 would soon cease to exist. (Tr. 299). To the contrary, while negotiating the parties’ 2016 contract – which took place mere months before the April 1, 2017 transfer – Stafford proposed changing the Union’s name in the contract from “Local 27 Buffalo Pressmen” to “Local 27 GCC.” (Tr. 361, GC Ex. 36). His proposal made no reference to Local 503, nor do the negotiation notes reference any discussion about the then-upcoming administrative transfer. (Tr. 361).

Neither Stafford nor the GCC informed Cascades of the administrative transfer when it went into effect on April 1, 2017. Instead, Cascades first became aware that Local 503 purported to represent Respondent’s employees on April 7, 2017, after Local 503 filed an unrelated unfair labor practice charge against the Company. (GC Ex. 6). At the time of the filing, Cascades had no knowledge that Local 27 had dissolved or that the GCC had administratively conveyed Local 27’s bargaining rights to Local 503.<sup>8</sup> To avoid confusion, and as the Company had no reason to believe that its bargaining relationship with Local 27 had ceased, Cascades reminded Stafford repeatedly over the next several months that it was bargaining with him as Trustee of Local 27 – *not* as President of Local 503. (GC Ex. 9, 12-13, 15, 19-21, 23, 26-27). Ultimately, Cascades first received notice of Local 27’s dissolution on October 27, 2017, when, as part of an unrelated legal proceeding, Local 503 provided the Company with a letter from the GCC to Stafford detailing

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<sup>8</sup> Cascades’ Human Resources Manager, Michelle Rosowicz, did, on occasion, send correspondence to Stafford at his Local 503 address, and addressed to “Michael Stafford, President.” (GC Ex. 7, 8). She did so because this was the title and address listed on Stafford’s business card. (Tr. 408, R Ex. 8). At no point did Rosowicz believe that she was corresponding with Local 503 as the representative of Cascades’ employees. (Tr. 409).

Local 27's dissolution and the administrative transfer of its assets, liabilities and responsibilities to Local 503. (Tr. 435).

**E. Local 503 Differs Significantly From Local 27**

Local 503 is a notably different labor organization than Local 27. Though, again (and as addressed below), Stafford did not provide a copy of Local 27's bylaws, he admitted in a sworn affidavit to the Board that Local 27's and Local 503's bylaws differed in a number of significant respects, including with regard to the Executive Board, dues structure and benefits. (Tr. 180). Local 503's dues are higher than those charged by Local 27, and Stafford admitted that Local 503 intends to require the now-former Local 27 members to pay Local 503's higher dues rate. (Tr. 220). It is geographically more difficult for Cascades employees to participate meaningfully in general membership meetings as, unlike Local 27 – which, prior to the transfer, conducted monthly meetings for members in nearby Depew – Local 503's monthly meetings take place in Rochester, New York, an hour-long drive from the Lancaster facility. (Tr. 370). To attend such meetings, Cascades' employees would need to travel *two hours* roundtrip (assuming good weather), presumably at a not insignificant cost.

Beyond these differences in bylaws, dues and geography (the impact of which should not be minimized, as such differences affect not only how the Unions are governed, but how they financially impact and benefit their members), Cascades employees are notably less represented in Local 503, both in terms of representation on the Executive Board and in the overall membership. Whereas Cascades employees represented approximately 54% of Local 27's members, they comprise only 17% of Local 503. (CP Ex. 2)<sup>9</sup> Moreover, while three (3) Cascades

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<sup>9</sup> This is with giving Local 503 the benefit of the doubt regarding their claim that their LM-3 – which reports a membership of 935 – includes “honorary lifetime members,” in addition to active, dues-paying members. Though

employees sat on Local 27's Executive Board (and thus were responsible for the "day-to-day business" of the Union), not a single Cascades employee sits on Local 503's Executive Board. (Tr. 260).<sup>10</sup> Pursuant to Local 503's bylaws, elections for Executive Board seats will not take place until November 2019 – over *two years after* Local 27's dissolution and the effective date of the purported administrative transfer. (R Ex. 3).

**F. Cascades' Inability To Bargain With Local 503**

As detailed above, Cascades learned on October 27, 2017 that Local 27 – the only union with which Cascades had a bargaining relationship – no longer exists. Cascades did not and does not have a bargaining relationship with Local 503, and had grave concerns about the GCC's purported right to transfer Local 27's bargaining rights for its own "administrative convenience." (GC Ex. 33). Thus, the Company informed its Local 27 members that, during the pendency of the instant Board hearings, Cascades would maintain the terms and conditions of their employment, except that Cascades would hold all dues deductions in escrow and no longer would apply the collective bargaining agreement's grievance and arbitration provisions. (GC Ex. 33).

To date, Cascades has not altered the terms and conditions of the Local 27 members' employment, except as noted above.

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Stafford testified that the number of actual members was 501 (the number from which our calculations are based), he later admitted that his records may be inaccurate and the number of active employees may be greater. (Tr. 355).

<sup>10</sup> Stafford claims that he asked Local 27 employees after the administrative transfer whether they were interested in a seat on the Executive Board, but that they declined. Cascades' employee Joseph Nemerowicz recalled being asked whether he was interested in a seat, but denied declining such a position. (Tr. 260).

## ARGUMENT

### RESPONDENT DID NOT VIOLATE THE NATIONAL LABOR RELATIONS ACT, AS CASCADES HAS NO OBLIGATION TO BARGAIN WITH LOCAL 503

#### **I. LOCAL 503 NEVER ASSUMED LOCAL 27'S BARGAINING RIGHTS**

When an existing bargaining representative merges or otherwise affiliates with another labor organization, the employer's duty to bargain continues only if the "identity of the representative remains essentially unchanged." *F.W. Woolworth Co.*, 285 NLRB No. 119, at slip op. 3 (1987).<sup>11</sup> In order to ensure that "no one can substitute an entirely different representative in disregard of the established mechanisms for making such a change," the so-called "continuity of representative" requirement seeks "to determine whether the changes are so great that a new organization has come into being—one that should be required to establish its status as a bargaining representative through the same means that any labor organization is required to use in the first instance." *Western Commercial Transport, Inc.*, 288 NLRB 214, 217 (1988).

##### **A. The Board's Continuity Analysis Must Consider Local 27's Pre-Trustee Status**

Here, continuity must be analyzed by comparing Local 27's pre-trustee status to those circumstances prevailing presently at Local 503. *Quality Inn Waikiki*, 297 NLRB 497, 497 n.1 (1989). We anticipate General Counsel and Charging Party will argue that the Board should disregard facts related to Local 27's pre-trustee status, and instead examine continuity from the time immediately preceding the administrative transfer to the time after the transfer purportedly was effectuated. This argument is misguided. The Board's holding in *Waikiki* is clear – when the

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<sup>11</sup> It remains Respondent's position that the Board's ruling in *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007) was in error, and that the Board should reinstate the due process requirement for any union affiliation, transfer or merger. Moreover, reliance on *Kravis* is inapposite as *Kravis* involved a merger of two unions – not a complete dissolution of an existing union. As ALJ Sorg-Graves precluded Respondent from proffering evidence on this issue, we have not addressed the merits of this argument in this post-hearing brief.

circumstances of a particular case “show that the changes under [a] trusteeship were extensive,” the appropriate time period to examine for purposes of continuity of representation is the pre-trustee timeframe. *Id.*

In *Waikiki*, the circumstances warranting a review of the pre-trusteeship period included, *inter alia*, that the original Local’s executive board members were suspended while the appointed Trustee conducted all business; the original Local’s bylaws were suspended; the new Local’s business agent serviced the original Local’s units; new bargaining units were organized; the Trustees conducted all collective bargaining and all grievance adjusting for the original Local; all of the original Local’s assets were transferred to the new Local, including the office equipment, files and bank accounts; and, the office of the original Local was closed and moved to the new Local’s office. *Id.* With the exception of the suspension of the bylaws and the creation of new bargaining units, *each of these circumstances applies to the case at hand.* As a result of the trusteeship, Local 27’s executive members were dismissed (Tr. 160); Stafford served as Local 27’s business agent (Tr. 35, 161); Stafford conducted all collective bargaining and all grievance adjusting for the original Local (Tr. 35); Stafford assumed control over all Local 27’s assets, including its office equipment, files and bank accounts (Tr. 197-198); and, Stafford closed Local 27’s offices, and moved Local 27’s operations to the existing Local 503 office (Tr. 161).

A decision to ignore the Board’s holding in *Waikiki* and compare Local 27 at the time immediately pre-administrative transfer to the time immediately after the administrative transfer would not only impinge on Local 27’s members’ representational rights under the Act, it would have a significant – and detrimental – effect on public policy. National organizations would be free to place a Local under trusteeship (a decision over which the Board has no control), impose significant changes to the Local’s operations, and then use trusteeship to establish a continuity that

would not otherwise exist – thus circumventing the continuity of representation requirement in its entirety. While this is problematic in its own right, it is of far greater concern given General Counsel’s and Charging Party’s stated position that employees are not entitled to due process safeguards during an affiliation or merger process. The Board cannot, and should not, allow unions to unilaterally manufacture continuity *via* trusteeship while simultaneously denying employees’ the right to participate in or object to a merger or affiliation. Doing so would abrogate the key purpose of the Act itself – the right for employees to choose their own bargaining representative.

**B. No Continuity Exists Between Local 27 and Local 503**

Though continuity of representation is based on a totality of the circumstances, factors relevant to the Board’s analysis include:

[C]ontinued leadership responsibilities by the existing union officials; the perpetuation of membership rights and duties, such as eligibility for membership, qualification to hold office, oversight of executive council activity, the dues/fees structure, authority to change provisions in the governing documents, the frequency of membership meetings, the continuation of the manner in which contract negotiations, administration, and grievance processing are effectuated; and the preservation of the certified union's physical facilities, books, and assets.

*Id.* If an affiliation, merger (or, as here, “administrative transfer”) results in significant changes to the factors detailed above, there is no continuity of representation and thus no obligation to bargain. *See, e.g. Goad Co.*, NLRB Div. of Advice, No. 14-CA-25345, February 25, 1999. As set forth below, even a basic comparison of a pre-trustee Local 27 and Local 503 demonstrates a lack of continuity of representation.

**1. The Board Should Find That Local 27's Bylaws, If Produced, Would Have Evidenced Substantial Differences Between Local 27 And Local 503**

As noted above, continuity of representation is contingent upon, among other things, a perpetuation of Local 27's membership rights and duties. Local 27's bylaws – which would detail the specific nature of such membership rights and duties – are thus critically important to any appropriate analysis of continuity. Local 503, however, failed to produce a copy of Local 27's bylaws, despite their undisputed relevance and the Board's issuance of a *subpoena duces tecum* compelling their production. This inexplicable – and unexplained – conduct warrants an adverse inference that the bylaws would have evidenced a lack of substantial continuity between Local 27 and Local 503 or, in the alternative, that the bylaws would have evidenced significant differences in Local 27's and Local 503's processes for membership rights and dues, eligibility for membership, qualification to hold office, oversight of the Executive Board, and authority to change provisions in Local 27's governing documents.

By way of brief background, on or around April 16, 2018, Respondent served Stafford and/or the Custodian of Records for Local 503 with *Subpoena Duces Tecum* B-1-10TLZ7X, which sought production of, *inter alia*, “A copy of the last bylaws of Local 27, and of any previous bylaws from January 1, 2012 to present.” (R Ex. 6). Stafford refused to produce the requested records, despite attesting in a November 28, 2017 sworn affidavit that he would provide the Board with a copy of Local 27's bylaws, and despite confirming that, at the time of his affidavit, he “must have had [the bylaws], yes.”

Remarkably, Stafford had no explanation for why he did not produce the subpoenaed documents. When asked why he failed to comply with the subpoena, Stafford's only response was:

A: I – I’ve provided a lot of material, so I don’t recall everything – everything that has been provided.

Q: Do you think you provided the bylaws to who?

A: I don’t recall.

Q: I mean, you just said you provided a lot of materials . . . . Who did you provide it to?

A: Yeah, I replied – provided a lot of materials to the attorneys.

Q: To your attorneys?

A: No, to the NLRB.

Q: To the NLRB. So maybe the NLRB has the – the bylaws?

A: Right. I don’t know if they were provided. That was in my statement, I will. I don’t know if they were.

(Tr. 180-182). Counsel for General Counsel confirmed subsequently that the Board was not in possession of Local 27’s bylaws. *Stafford provided no further explanation for his failure to comply with Respondent’s subpoena.*

It is well established that “when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him. *An inference may even be drawn that the material which the party refuses to show supports exactly the opposite of what he contends at the hearing.*” *National Football League*, 309 NLRB 78, 97-98 (1992) (emphasis added); *see also International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) v. NLRB*, 459 F.2d 1329, 1336 (1972) (same).

The reason for the “adverse inference” rule is straightforward; namely, that:

The failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavorable to the party.

*International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)*, 459 F.2d at 1336.

While the adverse inference rule does not require that existence of a subpoena, “the willingness of a party to defy a subpoena in order to suppress the evidence strengthens the force of the preexisting inference”. *Id.*

An adverse inference is warranted here. Stafford did not produce an undeniably relevant document, despite admitting he previously was in possession of the bylaws; admitting that he had agreed previously to provide the Board with a copy of the bylaws; and, admitted that he previously had provided the Board with substantive information regarding the bylaws’ content shortly after filing the unfair labor practice charge giving rise to the instant proceeding; and, admitting that he had agreed to provide the Board with a copy of the bylaws. Moreover, Stafford’s sworn affidavit *admitted* that Local 27’s bylaws differed with respect to, at minimum, the Executive Board, dues structure and benefits. (Tr. 180). His admission to these differences, and subsequent refusal to produce the document that would clarify the nature and scope of same, strongly suggests that Stafford purposefully is withholding documents that would expose facts unfavorable to his position. His inability to explain the lack of production further supports this conclusion.

Given the key relevance of the bylaws and total lack of explanation for why the bylaws were not produced, the Board should hold that the bylaws would evidence a total lack of continuity between Local 27 and Local 503 or, in the alternative, would evidence significant differences in Local 27’s and Local 503’s membership rights and duties.<sup>12</sup>

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<sup>12</sup> It should be noted that Local 27’s bylaws remained in effect until its dissolution. Thus, this adverse inference would warrant a finding that no continuity existed between Local 27 and Local 503 regardless of whether the Board analyzed Local 27 prior to trusteeship or after trusteeship.

## **2. The Remaining Evidence Establishes A Lack Of Continuity**

In addition to differences in their bylaws – both those differences that Stafford admitted, and those that should be inferred through adverse inference – Local 27 and Local 503 differed in a number of significant respects. As detailed above, Local 27's officers and agents were removed and replaced with Stafford (whom Local 27 never elected). Local 27's Executive Board was disbanded. Local 27 members will not be eligible for a seat on Local 503's Executive Board until November 2019, and thus have no ability to participate in the governance and management of their union. Local 27 employees soon will be subject to a new dues structure, which will require they pay increased dues amounts. Whereas Local 27 conducted monthly general membership meetings in nearby Depew, Local 27 members now must travel approximately two (2) hours roundtrip to attend Local 503 membership meetings. The Local 27 members working for Respondent went from composing a significant proportion of the membership of Local 27 to composing approximately 17% or less of the membership of Local 503. As a result, Respondent's Local 27 members' interests can easily be subsumed by the interests of the larger membership of Local 503—whose members live and work in a different and remote labor market.

These differences overwhelmingly evidence a total lack of continuity between Local 27 and Local 503. As no continuity exists, Cascades has no obligation to bargain with Local 503 and thus has not violated the Act.

## **II. CASCADES DID NOT UNILATERALLY MODIFY ITS COLLECTIVE BARGAINING AGREEMENT WITH LOCAL 27**

General Counsel contends that Cascades' refusal to arbitrate grievances brought by Local 503 under the collective bargaining agreement with Local 27 is a unilateral modification of the agreement. It is not. Cascades does not have a collective bargaining agreement with Local 503,

nor, as set forth above, has Local 503 assumed Local 27's bargaining rights. As Cascades cannot modify an agreement that does not exist, the Complaint must be dismissed.

### **CONCLUSION**

As set forth above, Local 503 never has represented Cascades' employees, nor does there exist any continuity in representation between Local 27 and Local 503. Local 503 cannot assume the bargaining rights of Local 27's employees – *who never chose Local 503 as their representative* – simply because doing so would be “administratively convenient.” Accordingly, the Complaint should be dismissed in its entirety.

Dated: June 22, 2018

Respectfully submitted,

JACKSON LEWIS P.C.

By:

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IAN B. BOGATY  
HENRY S. SHAPIRO

**UNITED STATES OF AMERICA  
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**CASCADES CONTAINERBOARD  
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**GRAPHIC COMMUNICATIONS CONFERENCE /  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 503**

**Petitioner.**

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**Case No. 03-CA-210207**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of June, 2018, I served a true copy of **RESPONDENT CASCADES CONTAINERBOARD PACKAGING – LANCASTER, A DIVISION OF CASCADES NEW YORK, INC.’S POST-HEARING BRIEF** *via* the National Labor Relations Board’s electronic filing service on the Division of Judges and *via* email as indicated below:

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